

APPEAL NO. 042188
FILED OCTOBER 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was scheduled for August 13, 2003, but was continued to and held on July 14, 2004. The hearing officer resolved the disputed issues by deciding that (decendent) suffered a compensable injury on _____, resulting in his death; that the decedent's employer for the purposes of the 1989 Act at the time of the injury was (employer 1) and (employer 2) as coemployers; that the appellant (carrier) is liable for the decedent's fatal injury sustained on _____; and that the carrier did not waive the right to defend the claim on the basis of the arguments asserted at the CCH. The carrier appealed, disputing the determinations that the decedent sustained his fatal injury while in the course and scope of employment and that the decedent's employer for the purpose of the 1989 Act at the time of the injury was employer 1 and employer 2, as coemployers. The respondent (claimant beneficiaries) responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

In its appeal, the carrier states that it received the hearing officer's decision and order on August 12, 2004. However, records of the Commission show that the decision was signed for by the carrier's representative on August 9, 2004. Under Rule 156.1(c), notice to the carrier's representative is notice to the carrier. Therefore, the carrier received the hearing officer's decision on August 9, 2004, when its representative received it.

Using the applicable calculation method and the carrier's receipt date of August 9, 2004, the carrier's request for review must have been mailed or filed no later than Tuesday, August 31, 2004. The carrier's appeal was received by the Commission's

Chief Clerk of Proceedings on September 2, 2004. Both the transmittal letter and the certificate of service reflects that it was not sent until September 2, 2004. The carrier's appeal is untimely as not having been mailed or filed on or before August 31, 2004. See Texas Workers' Compensation Commission Appeal No. 041253-s, decided on July 21, 2004.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge